IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13627 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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ISHWARBHAI KALIDAS PATEL & 2 - Petitioner(s)
Versus
GUJARAT STATE COOPERATIVE TRINBUNAL & 22 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 3.MRS RANJAN B PATEL for Petitioner(s) : 1 - 3.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR VC VAGHELA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/09/2006

ORAL JUDGMENT

1. The petitioners have challenged the order dated 25th May 1999 passed by the Inquiry Officer and

District Registrar Cooperative Societies, Bharuch by which the petitioners as the members of the managing committee of respondent No.3 – Cooperative Societies, were directed to pay a sum of Rs.27,930/- each. The petitioners have also challenged the order dated 2nd August 2003 passed by Cooperative Tribunal in the Appeal No.467 of 1999 upholding the order of the Inquiry Officer.

2. The facts leading to the present petition are as under :

2.1. The petitioners are elected Directors of respondent No.3 Society. With respect to the audit carried out by the auditor of respondent No.3, Society, certain observations were made for the period between 1-4-1993 to 31-3-1995. Apparently there were allegations against one Shri Desaibhai Ishwarbhai Patel having misappropriated certain funds of the Society to the tune of Rs.2,67,330/-.

2.2. Believing that the petitioners and other members of the Committee of the Society had not taken

appropriate steps to prevent such misappropriation, charge sheet came to be issued against them on 11st August 1998. The petitioners denied the charges and opposed the proposal of passing order under Section 93 of the Gujarat Cooperative Societies Act (hereinafter referred to “the said Act”).

2.3. The Inquiry Officer, however, after taking into consideration the material on record, came to the conclusion that the members of the Committee took no `steps to prevent the misappropriation by issuing proper instructions to said Shri Desaibhai Ishwarbhai Patel. It was observed that Shri Desaibhai Ishwarbhai Patel had by fabricating several vouchers committed misappropriation of total sum of Rs.2,67,330/- and committed a criminal offence. He had remained absent after 15th July 1994 and for which no notice had been issued to him. On the basis of these observations, the Inquiry Officer held that the members of the Committee did not take sufficient steps to prevent misappropriation and in turn, all the members were equally responsible to make good loss caused to the society. Adding the interest and costs to the

principal sum of Rs.2,67,330/-, he assessed that loss of the society would come to Rs.5,86,541/- and since there were 21 members of the Committee at the relevant time, this loss was distributed equally amongst all the members and each member was held personally liable to repay a sum of Rs.27,930/-.

3. The petitioners appealed against the order of the Inquiry Officer before Cooperative Tribunal. The appeal however, came to be rejected by Judgment dated 2nd August 2003.

3.1. In the said decision, the Tribunal observed that though the criminal complaint was filed against said Shri Desaibhai Ishwarbhai Patel, no steps were taken for recovery of the loss by instituting proceedings under Section 96 of the said Act. On this aspect of the matter, the appeal of the petitioner came to be rejected.

4. Learned advocate Shri B.S. Patel appearing on behalf of the petitioners submitted that the petitioners can not be personally held liable for

such loss. It was submitted that the Inquiry Officer as well as Tribunal erred in directing the petitioners to bear the portion of the misappropriated amount.

4.1. He further submitted that the Society as well as petitioners had taken sufficient care and in fact the criminal complaint was also filed against Shri Desaibhai Ishwarbhai Patel. He was absconding and was found missing and ultimately he was never traced.

4.2. It was also contended that the Tribunal erred in finding the petitioners responsible for not having filed Lavad Suit, since this was not even an allegation in the show cause notice.

4.3. He further submitted that the entire issue was highly political. Before the Tribunal, on 30th July 2003, at the request of learned advocate for the appellants, the appeal was adjourned initially to 5th August 2003. Subsequently, however, since the certain important elections were to be held on or around 4th August 2003, the proceedings without further notice,

came to be pre-poned to 2nd August 2003. The Tribunal proceeded to hear the appeal on 2nd August 2003 and passed final Judgment.

5. Learned A.G.P. Ms. Shah however, supported the impugned order and submitted that the authorities have given cogent reasons in support of the impugned order and no interference is called for.

6. Learned advocate Shri V.C. Vaghela for respondent No.3 supported the impugned order passed against the petitioners.

7. Having heard the learned advocates appearing for the parties and having perused the material on record, I find there was sufficient evidence to hold all the petitioners personally liable for the loss caused to the Society. It is not the case of the respondents that the petitioners were personally and directly responsible for such loss. Admittedly, the fraud was committed by an employee of the Society and criminal action for having committed misappropriation of funds of the Society was also instituted against

him. Apparently such defaulter employee was absconding and was never traced out. In that view of the matter, when there is insufficient material on record, personal liability of the petitioners could not have been held. The Inquiry Officer only made general observations suggesting that no instructions were given to the concerned employee by any of the members including petitioners. The Tribunal founding it that the criminal prosecution was lodged, observed, however, that no steps were taken to initiate proceedings under Section 96 of the said Act.

8. I find that evidence on record was insufficient to hold the petitioners guilty of having caused loss to the society. Impugned orders therefore, can not be sustained. The same are quashed. In the result, the petition is allowed. The amount deposited by the petitioners before this Court pursuant to an order dated 16th September 2003, shall be returned to the petitioners by A/c. Payee Cheque. Rule is made absolute. No order as to costs.

(A. A. KURESHI, J.)

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